

We request that the Commission accept these brief comments despite the Commission's prior direction to file comments "as prefiled testimony and exhibits." Order No. 28738 at 2.

The Comments also requested that the Commission include the Declaration of Tony Jones, which was previously submitted by the Intervenor in the Modified Procedure phase of Case Nos. IPC-E-01-7 and -11, as part of "the record of decision in this matter." Presumably, "this matter" refers only to Case No. IPC-E-01-16 since it is the only case number appearing in the Comments' caption.

On July 20, 2001, Idaho Power Company filed an Objection to the Intervenor's request. The Company objected to inclusion of the Intervenor's Comments in the record for three reasons. First, the Company noted that "the Commission explicitly ruled in Order No. 28738 that comments in a form other than prefiled testimony and exhibits would not be acceptable in this case." Objection at 2. Second, the Company argued that the Declaration does not belong in the IPC-E-01-16 case (which is to address interim and prospective issues) because the majority of Mr. Jones' Declaration consists of his opinions concerning the Company's historic resource planning decisions. The Company suggested that it would more appropriately be filed in the IPC-E-01-7 and -11 cases.

Third, Idaho Power asserted that because Mr. Jones' Declaration does not contain any exhibits, workpapers or other documentation that support its cost and value quantification, Idaho Power would be precluded from testing the validity of these "facts" if the Commission allowed Intervenor's Comments to be included in the record without the ability to cross-examine Mr. Jones. Finally, the Company noted that the Intervenor will have full opportunity to file testimony and exhibits addressing the costs and benefits of demand-side management (DSM) in Case IPC-E-01-13 and the historic resource planning process in the IPC-E-01-7 and -11 cases. However, the Intervenor did not submit comments or prefiled testimony in the IPC-E-01-7 and -11 cases prior to the July 20, 2001 filing deadline. Intervenor did file an answer to Idaho Power's Objection.

Commission Findings

After reviewing the Intervenor's request and Idaho Power's Objection, the Commission grants the Company's Objection and denies the Intervenor's request to accept their comments in lieu of testimony. Once the Commission initiated its further investigation into the

three cases, it convened a prehearing conference to determine the manner for processing the cases. Order No. 28722. Following the prehearing conference, the Commission issued its scheduling Orders setting the consolidated proceeding for hearing. IDAPA 31.01.01.247. Given the Commission's decision to conduct an evidentiary hearing, it ordered the parties to submit evidence in the form of "prefiled testimony and exhibits." Order Nos. 28731 at 4 and 28738 at 2. As noted in the Intervenor's footnote, they were aware of this requirement. In addition, accepting the Intervenor's comments and the previously filed Declaration of Mr. Jones to be included in the evidentiary record would deny the Company its ability to cross-examine the Intervenor. Consequently, we grant Idaho Power's Objection and shall not include the comments of the Intervenor in our hearing record. IDAPA 31.01.01.281 and .283. Although we shall not include Intervenor's comments as part of the hearing record, it shall be included as part of the Commission Secretary's official file in these cases. IDAPA 31.01.01.282.

II. IDAHO POWER'S PETITION FOR CLARIFICATION

On July 12, 2001, Idaho Power filed a Petition for Clarification in Case Nos. IPC-E-01-7 and -11 "to ensure that all parties, including Idaho Power, are certain as to what will be considered as the record in this proceeding when the Commission conducts its deliberations concerning the \$59,211,603 at issue...." Petition at 3. The Petition further stated that Idaho Power believes the record will consist of Commission Orders 28722, 28731, and 28738; Idaho Power's May 17 Motion for Modification and Request for Clarification of Order No. 28731; documents that the Commission takes official notice of; the evidentiary proceeding conducted on August 28-30, 2001; and any Orders issued after this date in Case Nos. IPC-E-01-7 and -11. This is the second time Idaho Power has sought to delineate the documents contained in the hearing record. No party submitted an answer to the Petition.

Commission Findings

The Commission finds that Idaho Power's Petition for Clarification of the record in Case Nos. IPC-E-01-7 and -11 is premature. As noted in our scheduling Orders, the hearing for these consolidated cases is set for August 28-30, 2001. The Commission's Rule of Procedure 283 states that the hearing record in a proceeding consists of all "transcripts of hearings, conferences, arguments and other proceedings on the record and all exhibits identified, offered, admitted or denied admission at hearing or prehearing conference." IDAPA 31.01.01.283. The record for our decision is based upon the hearing record, the Commissioners' record and items

officially noted. IDAPA 31.01.01.281. There will be ample opportunity at the Commission's evidentiary hearings for parties to request that the Commission take official notice of prior Orders. IDAPA 31.01.01.262 and .263.

ORDER

IT IS THEREFORE ORDERED that the Intervenors' request to accept their comments is denied and Idaho Power's Objection to Intervenors' comments is granted.

IT IS FURTHER ORDERED that Idaho Power's Petition for Clarification is dismissed without prejudice.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this day of August 2001.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

Commissioner Hansen Dissents to Part I
and Concurs in Part II

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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